

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

BRIAN O'NEAL CLARK (12)

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CRIMINAL NO. 4:05-CR-00173

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 6, 2013, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Andy Williams.

On July 20, 2006, Defendant was sentenced by the Honorable Michael H. Schneider, United States District Judge, to a sentence of 60 months imprisonment, to be followed by a three year term of supervised release for the offense of Use, Carrying, or Possession of a Firearm During, in Relation to and in Furtherance of a Drug Trafficking Crime. Defendant began his term of supervision on October 4, 2012. On November 30, 2012, the case was transferred to the Honorable Marcia A. Crone, United States District Judge.

On June 21, 2013, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 923). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a

controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall notify the probation officer at least ten days prior to any change in residence or employment; (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer; (5) Under the guidance and direction of the U.S. Probation Office, Defendant shall participate in any combination of psychiatric, psychological, or mental health treatment as deemed appropriate by the treatment provider.

The Petition alleges that Defendant committed the following violations: (1) Defendant submitted a urine specimen that tested positive for marijuana on February 9, 2013. Defendant admitted verbally and in writing that he used marijuana on February 3, 2013, at a Super Bowl party; (2) On March 8, 2013, Defendant submitted a urine specimen which tested positive for marijuana. Alere Director of Toxicology, Pat Pizzo, reported said urine specimen was the result of new drug use. On June 6 and June 11, 2013, Defendant submitted urine specimens which tested positive for cocaine; (3) Defendant abandoned his job at Food Source, McKinney, TX, on or about May 17, 2013, and failed to notify the probation officer of a change in employment. Defendant notified the probation officer on June 7, 2013; (4) Defendant failed to submit a urine specimen for testing as directed at Pillar Counseling, Plano, TX on June 18, 2013; and (5) Defendant failed to attend mental health counseling at Pillar Counseling, Plano, TX, as directed on March 18, March 28, April 18, April 22, May 3, May 31, and June 11, 2013.

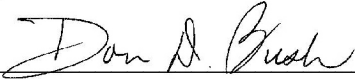
At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation

of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the August 6, 2013 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of thirteen (13) months, with twenty-four (24) months supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Seagoville, Texas, if eligible.

SIGNED this 14th day of August, 2013.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE